No. 20704

In the United States Court of Appeals for the Ninth Circuit

DON THE BEACHCOMBER, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

ON PETITION FOR REVIEW AND ON CROSS-PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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JURISDICTION

This case is before the Court upon the petition of Don the Beachcomber (herein called petitioner or the Company) to review and set aside an order of the National Labor Relations Board (R. 31–32, 46–47) [1] issued against petitioner on March 3, 1967, following

[1] References designated "R." are to Volume I of the record as reproduced pursuant to Rule 10 of this Court. References designated "Tr." are to the reporter's transcript of testimony as reproduced in Volume II of the record. References designated "GCX", and "PX", and "CPX" are to the General Counsel's, petitioner's and the charging parties exhibits, respectively. Whenever in a series of references a semicolon appears, those preceding the semicolon are to the Board's findings; those following are to the supporting evidence.

The Union, on March 11, sent a second letter to the Company again claiming majority status and offering to submit to a card check by a third party (Tr. 379; CPX 1). Receiving no response to either letter, the Union filed a representation petition with the Board on March 15 (Tr. 78–79). During a conversation on that date with a Board agent, Company's counsel, Matthias J. Diederich, was notified that this petition had been filed (Tr. 449–450). On the same day Diederich sent a letter to the Union in which he did not question the Union's majority status but simply stated (R. 26; GCX 5):

> It has been our experience and it is our belief that employees frequently sign authorization cards for reasons other than the intent to appoint a union as their bargaining agent, and for this reason, we believe the question of representation should be decided by a secret ballot election.

B. The campaign to defeat the Union

Shortly after President Fine received the Union's letter requesting recognition he asked Service Manager Nash Aranas to "more or less find out if it [was] true" that the Union represented a majority of the Palm Springs employees (R. 26; Tr. 384–385). On March 11, Aranas asked waiter Ben Jordan, his brother-in-law, if he had joined the Union (R. 27; Tr. 302–303, 352–354). Aranas also told Jordan that he understood many employees had authorized the Union to represent them (R. 27; Tr. 303). After Jordan replied that this was true, Aranas asked: "I wonder why you boys have joined the Union, when we used

to be just like one happy family? Why should we have a third man between us?'' (R. 27; Tr. 303–304.) Jordan suggested that Aranas ask the employees and offered to hold a meeting at his home that evening for such purpose (R. 27; Tr. 304). Many of the employees in the unit attended this meeting, which began about midnight (R. 27; Tr. 129, 144, 204–205, 304–305, 375).

At the meeting Jordan stated that ''the main thing that I ask[ed] you boys to come here for is for Nash [Aranas] to know why you signed the union card'' (R. 27; Tr. 309). He asked each of those present to stand up and say why he had joined the Union (R. 27; 131, 262–263, 310). Service Manager Aranas then addressed the group, stating that they were one big happy family and that the employees could come to him to straighten out problems (R. 27; Tr. 308). He told them that he was not opposed to the Union and that, if the employees wanted to join the Union, it was their business, but that they should know the advantages and disadvantages of union membership (R. 27; Tr. 144–145). Aranas asserted that he did not think that union representation would benefit the employees (R. 27; Tr. 356). He warned that the Union might require the employees to work no more than 5 or 6 days a week; that under the existing system which afforded the employees no overtime pay, they could work 7 days and collect more tips; and that, if the Union forced the Company to pay overtime, it might have to cut down on the number of hours and days worked (R. 27; Tr. 133–134, 198, 205, 264–266, 354–355). Aranas also cautioned that the Union might require the Company to change its method of rotating

ployees dated March 31, 1966 (R. 28–29; Tr. 387, PX 3). It read as follows:

> A charge has been filed with the National Labor Relations Board alleging that one or more of our supervisors has threatened reprisals against employees who support the Union. We want you to know that we have instructed our supervisors that no employee is to be threatened or discriminated against because he supports the Union.
>
> We assure you that if any such threats of reprisal were made, they were not authorized and were contrary to our instructions. Whether or not you support the Union is your free choice.
>
> We assure you that you are free to support or not support the Union as you wish, without any fear of reprisal or promise of benefits.

II. The Board's conclusions and order

Upon the foregoing facts, the Board found that the Company violated Section 8(a)(1) of the Act by coercively interrogating and polling employees concerning their union activities and by threatening economic reprisals for such activities. The Board further found that the Company violated Section 8(a) (5) and (1) of the Act by refusing to recognize and bargain with the Union because the Company was motivated not by a good faith doubt of the Union's majority status but by a desire to destroy the Union's majority (R. 29–30, 46–46).

The Board's order (R. 31–32, 46–47) requires the Company to cease and desist from the unfair labor

practices found and from in any other manner infringing upon its employees' rights under the Act. Affirmatively, the order requires the Company to bargain with the Union on request and to post appropriate notices.

ARGUMENT

I. Substantial evidence on the record as a whole supports the Board's finding that the Company violated Section 8(a)(1) of the Act

The evidence summarized above reveals that upon receiving the Union's request for recognition, petitioner embarked on a course of unlawful conduct designed to discourage the employees' support of that organization. Thus, shortly after the Company received the recognition request, Service Manager Aranas participated in the polling of the Palm Springs employees to determine their union sympathies. After the employees affirmed their support of the Union, Aranas threatened that a reduction of hours of work and, therefore, of tips and pay, and that a change in the system of rotating waiters might result from unionization. The coercive impact of Aranas' remarks is vividly demonstrated by employee Jaramillo's reaction that, if he had known the tips were going to be less and the hours of work shorter, he would not have joined the Union (Tr. 207). Aranas also interrogated employees Jordan, Mandapat, and Nobello individually concerning their union activities. Aranas threatened Mandapat that he did not know what he was "going to be missing" by joining the Union and that employees might lose their jobs if the Palm Springs restaurant was unionized (Tr. 184, 280–

281). In addition, Aranas threatened Mandapat and Nobello with loss of employment opportunities at the Company's Hollywood restaurant during the months the Palm Springs operation closes down if the Union became their collective bargaining representative. That such employer conduct interferes with, restrains, and coerces employees within the meaning of the Act is too well settled to require extended discussion. *N.L.R.B.* v. *U.S. Divers Company,* 308 F. 2d 899, 905 (C.A. 9); *N.L.R.B.* v. *Security Plating Company, Inc.,* 356 F. 2d 725, 728 (C.A. 9); *N.L.R.B.* v. *Victory Plating Works, Inc.,* 325 F. 2d 92, 93 (C.A. 9); *Carpenteria Lemon Assn.* v. *N.L.R.B.,* 240 F. 2d 554, 558 (C.A. 9), cert. denied, 354 U.S. 909; *N.L.R.B.* v. *Parma Water Lifter Co.,* 211 F. 2d 258, 261–262 (C.A. 9), cert. denied, 348 U.S. 829; *N.L.R.B.* v. *West Coast Casket Co.,* 205 F. 2d 902, 904 (C.A. 9). Cf. *NL.R.B.* v. *California Compress Co.,* 274 F. 2d 104, 106 (C.A. 9).

The Company contends that Aranas' polling and interrogating of employees concerning their union sympathies were not coercive; that his statements at the meeting in Jordan's home and to Norbello concerning work in the Hollywood restaurant were mere predictions or opinion about the future protected by Section 8(c) of the Act. We submit that the "opinions or arguments" that Aransas expressed at the meeting "were more than those authorized by Section 8(c) or the First Amendment to the Constitution. Rather, they constituted [part of] a prohibited anti-union campaign." *N.L.R.B.* v. *Security Plating Company, Inc.,* 356 F. 2d 725, 728 (C.A. 9). As the Fifth Circuit ob-

served in *N.L.R.B.* v. *Nabors,* 196 F. 2d 272, 276 (C.A. 5), cert. denied, 344 U.S. 865 (cited with approval by this Court in *N.L.R.B.* v. *Geigy Company,* 211 F. 2d 553, 557), cert. denied, 348 U.S. 821[9]:

> [W]hen statements such as these are made by one who is a part of the company management, and who has the power to change prophecies into realities, such statements whether couched in language of probability or certainty, tend to impede and coerce employees in their right to self-organization, and therefore constitute unfair labor practices.

Section 8(c) of the Act extends to the expression of "views, argument or opinion" *only* when unaccompanied by threats of reprisal or promise of benefits. Plainly, then, Section 8(c) does not protect the statements Aranas made at the meeting, nor his statement to Norbello that, if the Palm Springs restaurant was unionized, Norbello could not work during the summer months in the Hollywood restaurant which was nonunion.

The Company also urges that the Trial Examiner and the Board improperly credited employee Leonard Mandapat who testified not only concerning interrogations and threats made by Aranas but also concerning authorization cards signed in his presence. The Com-

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[9] Accord: *Edward Fields, Inc.* v. *N.L.R.B.*, 325 F. 2d 754, 760 (C.A. 2); *Hendrix Mfg., Inc.* v. *N.L.R.B.*, 321 F. 2d 100 (C.A. 5); *N.L.R.B.* v. *Moore Dry Kiln Co.*, 320 F. 2d 30, 32 (C.A. 5); *N.L.R.B.* v. *Elias Bros. Big Boy, Inc.*, 327 F. 2d 421, 422–423 (C.A. 6); *Bauer Welding and Metal Fabricators* v. *N.L.R.B.*, 358 F. 2d 766 (C.A. 8); *Santangelo* v. *N.L.R.B.*, 364 F. 2d 979 (C.A. 10).

pany contends that certain discrepancies between Mandapat's testimony and statements in his prehearing affidavits and tax returns showing his earnings record require that he be discredited. In light of the Company's contentions, the Board made a "careful review of the record," on the basis of which, it concluded that "the inconsistencies referred to by [the Company] did not warrant impeachment of Mandapat's credibility." It further noted that the Trial Examiner's resolutions of credibility were not "contrary to the clear preponderance of all the evidence" (R. 46, n. 1). The Board cited the testimony of other employees and of Aranas himself which corroborated much of Mandapat's testimony (*ibid.*). In an unfair labor practice case where, as here, the Board has adopted the Trial Examiner's findings crediting certain testimony and discrediting other testimony, it is well settled that their determinations will not ordinarily be disturbed. *N.L.R.B.* v. *Local 776 I.A.T.S.E.,* 303 F. 2d 513, 518 (C.A. 9), cert. denied, 371 U.S. 826; *N.L.R.B.* v. *Stanislaus Equipment Co.,* 226 F. 2d 377, 381 (C.A. 9); *N.L.R.B.* v. *Homedale Tractor & Equipment Co.,* 211 F. 2d 309, 315 (C.A. 9), cert. denied, 348 U.S. 833; *N.L.R.B.* v. *Dant,* 207 F. 2d 165, 167 (C.A. 9); *N.L.R.B.* v. *San Diego Gas & Electric Co.,* 205 F. 2d 471, 475 (C.A. 9). We submit that there are no circumstances present in this case which would warrant a departure from this general rule and that the resolutions of the Trial Examiner, adopted by the Board, are entitled to affirmance.

Against the background of the threats made at the meeting and to employees Mandapat and Nobello, the

polling and interrogating of employees concerning their union sympathies were clearly coercive. Furthermore, the notice petitioner posted after the filing of the unfair labor practice charges herein was not sufficient to counteract or neutralize its unlawful conduct. A repudiation, in order effectively to overcome coercive action must be timely and unambiguous. *Livingston Shirt Corp.,* 107 NLRB 400, 403; *Salant & Salant, Incorporated,* 92 NLRB 417, 444–446 and cases cited therein. Here, the Company's notice was not posted until after the Company's campaign to undermine the Union and its persistent refusal to recognize the Union made necessary the filing of charges with the Board to vindicate the employees' organizational rights. Under such circumstances, the reasonable presumption is that the notice was intended to aid the Company in the subsequent presentation of its defense against those charges. The notice, furthermore, contained no specific repudiation or disavowal of past conduct. It merely referred to the fact that there had been charges filed with the Board which *alleged* that one or more supervisors had threatened reprisals against employees who supported the Union, and further purported to assure employees that *if* "any such threats of reprisal were made, they were not authorized and were contrary to our instructions" (R. 29; PX 3). Declarations couched in general terms do not amount to an adequate repudiation of past coercive conduct. "Even where assurances are made to the employees, the actions of executives may be looked to to determine the policy of the company. Lip service to the policy and purposes of the Act is not sufficient."

N.L.R.B. v. *Laister-Kauffmann Aircraft Corp.*, 144 F. 2d 9, 15 (C.A. 8). We submit that, notwithstanding the Company's general disclaimer, there was, on the evidence in this case, interference, restraint and coercion justifying the Board's finding of violations of Section 8(a)(1) of the Act. *N.L.R.B.* v. *Austin Powder Company,* 350 F. 2d 973, 975–976 (C.A. 6); *N.L.R.B.* v. *Armstrong Tire & Rubber Co.,* 228 F. 2d 159, 160–161 (C.A. 5); *N.L.R.B.* v. *Mylan-Sparta Co.,* 166 F. 2d 485, 490 (C.A. 6); *Magnolia Petroleum Co.* v. *N.L.R.B.,* 200 F. 2d 148, 150 (C.A. 5).

II. Substantial evidence on the whole record supports the Board's finding that the Company violated Section 8(a) (5) and (1) of the Act by refusing to recognize and bargain with the Union

Section 8(a)(5) of the Act requires an employer "to bargain collectively with the representatives of his employees, subject to the provisions of Section 9(a)." This latter section provides that "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all employees in such unit for the purposes of collective bargaining. * * *" Although Section 9(c)(1) provides machinery by which the question of representative status may be determined in a Board-conducted election, it has long been settled that an election is not the only means by which a union's representative status may be established. See *United Mine Workers* v. *Arkansas Oak Flooring Co.,* 351 U.S. 62, 71–72. Thus, there is no absolute right vested in an employer to demand an election. *N.L.R.B.*

v. *Idaho Egg Producers,* 229 F. 2d 821 (C.A. 9); *N.L.R.B.* v. *Trimfit of California, Inc.,* 211 F. 2d 206, 209 (C.A. 9); *N.L.R.B.* v. *W. T. Grant Co.,* 199 F. 2d 711 (C.A. 9), cert. denied, 344 U.S. 928. Where a union has obtained authorization cards signed by a majority of the employees in an appropriate unit, designating the union as their bargaining representative, an employer violates Section 8(a)(5) of the Act if, absent a good-faith doubt of the union's majority status he refuses to recognize and bargain with the Union, in order to gain time within which to undermine the union's majority support. *N.L.R.B.* v. *Security Plating Company,* 356 F. 2d 725, 726–727 (C.A. 9); *Master Transmission Rebuilding Corp.* v. *N.L.R.B.,* 373 F. 2d 402 (C.A. 9), enforcing 155 NLRB 364, 367–369; *Snow* v. *N.L.R.B.,* 308 F. 2d 687, 691 (C.A. 9); *N.L.R.B.* v. *Scott & Scott,* 245 F. 2d 926, 928 (C.A. 9); *N.L.R.B.* v. *Parma Water Lifter Co.,* 211 F. 2d 258, 263 (C.A. 9), cert. denied, 348 U.S. 829; *N.L.R.B.* v. *Geigy,* 211 F. 2d 553, 556 (C.A. 9), cert. denied, 348 U.S. 821.

The record here shows that by March 8, the date the Union requested recognition as bargaining agent, it represented 27 of the 52 employees in the unit sought. Moreover, the Union expressed its willingness to demonstrate its majority status to the Company by submitting its cards for review by "an impartial third party" (R. 26; GCX 4). In response, the Company did not question the Union's majority status or the appropriateness of the unit, but merely stated that it would not recognize the union without an election. We submit that the Company's total course of conduct

demonstrates its lack of good-faith doubt of the Union's majority status. For while a good-faith doubt of majority is a proper defense, this is so "only where the doubt has a rationale basis in fact." *N.L.R.B.* v. *Howe Scale Co.*, 311 F. 2d 502, 504 (C.A. 7). Here, although the Union offered the Company a method of verifying its claim to representative status, the Company chose to disregard the offer, and instead, to engage in conduct designed to suppress the Union. See *Joy Silk Mills* v. *N.L.R.B.*, 185 F. 2d 732, 741–742 (C.A.D.C.), cert. denied, 341 U.S. 914. In short, the Company's conduct in refusing to honor the Union's request for bargaining and contemporaneous resort to coercive activities in an effort to destroy the Union's majority were patently "inconsistent with the policy and purpose of Section 8(a)(5) of the Act and evidences employer rejection of collective bargaining principles. *"Retail Clerks Union, Local 1179* v. *N.L.R.B.*, 376 F. 2d 186, 191 (C.A. 9).

The Company alleges that it undertook to determine the facts by polling the employees and that it concluded from statements several employees made that a majority of the employees had not authorized the Union to represent them. Although it is true that, during the unlawful polling, certain employees said that they had signed cards because others were doing so (R. 27; Tr. 148, 208, 270, 310–311), such statements afford no basis for invalidating their cards or for the Company's purported doubt about the Union's ma-

jority status, for such statements do not indicate that the employees' act of signing was not voluntary or uncoerced. Further, the statements were extracted from the employees by their supervisor under circumstances that were hardly the occasion for free expression of choice. Moreover, it is well recognized that "an employee's thoughts (or afterthoughts) as to why he signed a union card, and what he thought the card meant, cannot negative the overt action of having signed a card designating a union as bargaining agent." *Joy Silk Mills* v. *N.L.R.B.,* 185 F. 2d 732, 743 (C.A.D.C.), cert. denied, 341 U.S. 941. Since the authorization cards were clear and unambiguous (GCX 3a–3z), any reservations certain employees might later have expressed cannot serve to invalidate their otherwise valid designations of the Union as their bargaining representative. *N.L.R.B.* v. *Hyde,* 339 F. 2d 568, 570 (C.A. 9).[10]

We submit that the Company's attempt to undermine the Union's support contemporaneous with its refusal to recognize the Union, except after a Board-conducted election, demonstrates its lack of good-faith

[10] Accord: *Jas. H. Matthews & Co.* v. *N.L.R.B.*, 354 F. 2d 432, 436 (C.A. 8), cert. denied, 384 U.S. 1002; *Colson Corp.* v. *N.L.R.B.* 347 F. 2d 128, 135 (C.A. 8), cert. denied, 382 U.S. 904; *N.L.R.B.* v. *Winn-Dixie Stores, Inc.*, 341 F. 2d 750, 755 (C.A. 6), cert. denied, 382 U.S. 830; *Consolidated Machine Tool Corp.*, 67 NLRB 737, 739, enf'd, 163 F. 2d 376, 378 (C.A. 2), cert. denied, 332 U.S. 824; *N.L.R.B.* v. *Stow Mfg. Co.*, 217 F. 2d 900, 902 (C.A. 2), cert. denied, 348 U.S. 964; *N.L.R.B.* v. *Greenfield Components Corp.*, 317 F. 2d 85, 89 (C.A. 1).

doubt of the Union's majority status and, therefore, that the Board's finding that the Company violated Section 8(a) (5) and (1) of the Act is entitled to affirmance. See cases cited *supra,* pp. 15–16.

In an effort to overturn the Board's conclusion that it violated Section 8(a)(5) of the Act, the Company seeks to challenge the finding that the Union had a majority, by arguing that the introduction at the hearing of certain authorization cards, which were not identified by their signatories, violated its right to cross-examine the signers and that these cards constituted inadmissible hearsay evidence because they were "out of court statements" made by persons who did not appear as witnesses to prove the truth of their contents (Br. p. 7). This contention has no merit, for it is well established that cards may be authenticated by persons who witnessed the signing of authorization cards and can testify as to the attending circumstances and manner in which the cards were signed. *N.L.R.B.* v. *Howell Chevrolet Co.,* 204 F. 2d 79, 85–86 (C.A. 9); *N.L.R.B.* v. *Sunshine Mining Co.,* 110 F. 2d 780, 790 (C.A. 9), cert. denied, 312 U.S. 678; *Colson Corporation* v. *N.L.R.B.,* 347 F. 2d 128, 134 (C.A. 8), cert. denied, 382 U.S. 904; *N.L.R.B.* v. *Economy Food Center,* 333 F. 2d 468, 471 (C.A. 7); *N.L.R.B.* v. *Philamon Laboratories,* 298 F. 2d 176, 179–180 (C.A. 2), cert. denied, 370 U.S. 919. Here, as the Board found (R. 46), the General Counsel properly authenticated the cards through witnesses who testified to observing the signing of the cards or receiving a signed card from the signatory employees. Moreover, it is significant, as the Board noted (*ibid.*) that not

only the employee witnesses but also Service Manager Aranas testified that employees at the Jordan meeting declared that they signed cards and joined the Union (Tr. 358).[11]

There is likewise no merit in petitioner's contention that, before the hearing, the General Counsel should have furnished its attorney with a list of those employees who had signed cards in order to enable a proper presentation of petitioner's case. Although petitioner requested and was denied (R. 16–23) an order for a bill of particulars prior to the hearing, it was seeking other information at that time and made no request for data on the identity of card signers (R. 16–19). Moreover, at the hearing, the Trial Examiner expressly advised petitioner's counsel that, if he needed time to compare the signatures on the cards

[11] Petitioner contends (Br. p. 7) that the card of Antonio Landeros was never authenticated. Employee Tito Tana testified (Tr. 119–121) that Landeros gave him a card bearing Landeros' name and that he submitted the card to the Union. This Court has held that a card may be authenticated by such testimony. *N.L.R.B.* v. *Howell Chevrolet Co.*, *supra*, 204 F. 2d at 85–86; *N.L.R.B.* v. *Howard-Cooper Corp.*, *supra*. 259 F. 2d 558, 560. With respect to the cards authenticated by Union Representative Sue Haning, petitioner states (Br. pp. 4–5) that Haning "had no first-hand knowledge that four of the cards which she attempted to authenticate had been signed by the purported signatories." These cards were signed at a small meeting over which Haning officiated (Tr. 11–12). Tana helped her arrange the meeting and introduced her to each employee as he arrived (Tr. 12, 26). No one other than petitioner's employees attended the meeting (Tr. 158–159). The cards were placed on a table, employees picked them up, signed them in Haning's presence, and returned them to her (Tr. 28–29). Clearly, Haning was qualified to testify concerning the authenticity of all these cards.

with those on the payroll records or "to check out the witnesses," he would "give it to [him]" (Tr. 126). Of course, counsel could have applied for subpenas to bring in any person not present at the hearing. No application for a continuance or for subpenas was made. Under such circumstances, petitioner cannot show prejudice in the presentation of its case. Cf. *N.L.R.B.* v. *Globe Wireless Ltd.*, 193 F. 2d 748, 751 (C.A. 9).

Petitioner also contends now (Br. p. 8) that Jok Chan never authorized the Union to represent him. This "contention not having been expressly raised before the Board, it * * * should not be considered in this enforcement proceeding." *N.L.R.B.* v. *Hyde*, 339 F. 2d 568, 570 (C.A. 9). The "failure to inform the Board at the proper time that [this matter] would be drawn in question * * * precludes the claim here." *N.L.R.B.* v. *Sunshine Mining Co.*, 110 F. 2d 780, 790 (C.A. 9), cert. denied, 312 U.S. 678.[12] In any event, the record establishes that Chan was a member of the Union at the time of its request for recognition. True,

[12] Other matters not raised in petitioner's exceptions to the Trial Examiner's Decision are 1) the assertion (Br. p. 11) that the letter demanding recognition failed to describe unambiguously an appropriate unit, and 2) the claim (Br. p. 6) that cards were obtained through misrepresentations. Nor did petitioner question the Union's description of the unit sought or its appropriateness at the time of the refusal to bargain. Further, nothing in the record shows that there were any misrepresentations in obtaining cards, let alone that any such alleged misrepresentations were known to petitioner. The fact that grounds for a doubt might have developed after the refusal to bargain is immaterial. *Retail Clerks Union, Local 1179* v. *N.L.R.B.*, *supra*, 376 F. 2d at 191 (C.A. 9); *Snow* v. *N.L.R.B.*, *supra*, 308 F. 2d at 693–694 (C.A. 9).

he had been initiated into a sister local, but he transferred to the local seeking to represent petitioner's employees, and paid dues to it regularly for several months prior to the recognition demand. Accordingly, the Board properly found that Chan had authorized the Union to represent him. Cf. *American Newspaper Publishers Association* v. *N.L.R.B.*, 193 F. 2d 782, 804–805 (C.A. 7), cert. denied, 344 U.S. 812; *N.L.R.B.* v. *Bradford Dyeing Association*, 310 U.S. 318, 339; *N.L.R.B.* v. *Franks Bros. Co.*, 137 F. 2d 989, 992 (C.A. 1), affirmed, 321 U.S. 702; *N.L.R.B.* v. *Delaware New Jersey F. Co.*, 128 F. 2d 130, 134 (C.A. 3); *N.L.R.B.* v. *Chicago Apparatus Co.*, 116 F. 2d 753, 756 (C.A. 7).

CONCLUSION

For the reasons stated, it is respectfully submitted that a decree should issue enforcing the Board's order in full.

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SEPTEMBER 1967.

Certificate

The undersigned certifies that he has examined the provisions of Rules 18 and 19 of this Court and in his opinion the tendered brief conforms to all requirements.

Marcel Mallet-Prevost,
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National Labor Relations Board.

Appendix

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151, *et seq.*) are as follows:

Rights of Employees

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

Unfair Labor Practices

Sec. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7; * * *

* * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

* * * * *

(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the pro-

visions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

* * * * *

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: * * *

* * * * *

U.S. GOVERNMENT PRINTING OFFICE: 1967